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ALEXANDER L. STEVAS,
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No. 83-932

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

TEXAS INTERNATIONAL AIRLINES, INC.,

Petitioner,

v.

NATIONAL AIRLINES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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The extraordinary confusion and absurd results that have characterized efforts to apply this Court's decision in *Kern County Land Co. v. Occidental Petroleum Corp.*, 411 U.S. 582 (1973), to other corporate control battles are dramatically illustrated by comparing the present case with *Heublein, Inc. v. General Cinema Corp.*, in which a petition was filed in this Court on January 5 seeking a writ of certiorari to the United States Court of Appeals for the Second Circuit.

In deciding that the defeated takeover contestant in *Kern County* was not liable under Section 16(b), this Court identified three factors, the first of which is critical in terms of the purposes of Section 16(b):

(1) the defendant, who had attempted a hostile takeover, had no access to inside information;

(2) the defendant had no control over the timing of the sale of his shares, which happened automatically on a merger;

(3) the form of consideration was stock-for-stock rather than stock-for-cash.

The present case has the critical first factor—no access to inside information—but did not have the other two, and the court below found liability. Yet in *Heublein, Inc. v. General Cinema Corp.*, where the defendant actually had inside information, the Second Circuit found no liability because the second and third factors were present.

On any sensible reading of Section 16(b) purposes, these results should have been precisely the contrary: In the name of a statute which expressly recites that it was enacted "[f]or the purpose of preventing the unfair use" of inside information, a defendant which actually had inside information was absolved while a defendant which had no access to inside information was held liable.

Dated: January 16, 1984

Respectfully submitted,

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